APPENDIX A.

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

September Term and Session, 1960.

No. 12889

Perry Coal Company and
Peabody Coal Company, et al.,
Petitioners,

v.

National Labor Relations Board,
Respondent.

No. 12915

United Mine Workers of America,
et al.,
Petitioners,

v.

National Labor Relations Board,
Respondent.

On Petition to Review and Set Aside and on Cross-Petition to Enforce a Decision and Order of The National Labor Relations Board.

December 2, 1960

Before Duffy and Schnackenberg, Circuit Judges, and Mercer, District Judge.

Duffy, Circuit Judge. Appeal No. 12889 is before this Court upon the petition of Peabody Coal Company (Peabody) to review and set aside an order of The National

Labor Relations Board[1] issued against Peabody and also against the petitioners in appeal No. 12915.

Appeal No. 12915 is before the Court upon petition of the United Mine Workers of America, its District 12, and its Local Unions 1227 and 1229, to review and set aside the same order of the Board. In its answer which applies to both appeals, the Board has requested enforcement of its order.

The charging party is the Progressive Mine Workers of America. Among the sections of the Labor Management Relations Act claimed to have been violated are: Sections 8 (a) (1); 8 (a) (2); 8 (a) (3); 8 (a) (5); 8 (b) (1) (A) and 8 (b) (2).

No employee of either of the coal mines hereinafter described complained of any coercion or discriminatory conduct. Fundamentally, this is a struggle between the Progressive Mine Workers of America (Progressive) and the United Mine Workers of America (UMW) with the employer, Peabody, being more or less in the middle.

For many years prior to the summer of 1957, Progressive and its Local 167, represented employees of Midwest Radiant Corporation (Midwest) at the Millstadt mine, and Progressive and its Local 75 represented employees of Perry Coal Company (Perry) at the O'Fallon mine. This representation was accomplished by means of labor agreements between Progressive and its Locals 167 and 75 and Coal Producers Association of Illinois of which Perry and Midwest were members.

For many years prior to the summer of 1957, Peabody, as a member of the Illinois Coal Operators Association, had recognized UMW as the exclusive bargaining representative at twenty-seven other mines which it owned

[1] 125 N. L. R. B. No. 110 (Dec. 30, 1959).

and operated in Illinois and other parts of the country. The collective bargaining agreement included the National Bituminous Coal Wage Agreement of 1950 as amended, and the Wage Agreement and Working Conditions of District No. 12.

The 1952 amendment provided that the Agreement covers the operation of all of the coal lands owned or held under lease by the coal operators, or acquired during the term of the contract. This amendment was carried forward and preserved by the 1956 amendment which provided that the Agreement covered all of the bituminous coal mines owned or operated by the coal operators who were parties to the agreement.

Through a process of liquidation and merger occurring about October 3, 1957, the properties of Perry and Midwest became the properties of Peabody. The only employer now involved in these proceedings is Peabody.

In May or June, 1957, which was after Peabody acquired control of the Millstadt and O'Fallon mines, Hugh White, president of UMW's District 12, notified Hartman, general mine superintendent of Peabody, and McCollum, a vice president of Peabody and formerly a vice president of Perry, that Peabody must comply with the provisions in the National Bituminous Coal Wage Agreement by recognizing UMW and applying the terms of the contract at the Millstadt and O'Fallon mines. His demand was not based upon a claim that District 12 represented any of the employees at these mines.

McCollum and Hartman agree the contract applied to all Peabody operations, and stated that they would apply the contract as a matter of course when their contract with Progressive expired, and when UMW could show that it represented a majority of the employees.

In May or June, 1957, White obtained from Hartman a list of the names and addresses of the employees of the

Millstadt mine, and obtained from McCollum a similar list of the employees at the O'Fallon mine. Both Hartman and McCollum knew UMW planned to attempt to organize the employees of the two mines. Hartman testified that such lists which were partially incorrect, had been previously furnished to charity organizations, manufacturers' representatives, insurance men and others.

On July 1, 1957, White sent letters to all employees at both mines. At this time the mines were closed down for the annual vacation period. The letters recited that UMW had served notice on Peabody that it must comply with the provisions in the National Bituminous Coal Wage Agreement, and that all provisions of that contract be applied at the Millstadt and O'Fallon mines. It invited all employees to become members of UMW, and enclosed a membership card upon which it requested the signature of the person addressed.

On July 4, 1957, Roy Dupee, president of Progressive's District No. 1, wrote Peabody, cautioning it to comply with the Progressive agreement and the wishes of "your employees as to Union affiliation." Peabody did not reply to Dupee's letter. Dupee made numerous telephone calls to Peabody at St. Louis to ascertain the company's position concerning the demand of UMW. No one in authority would or did answer.

The annual vacation period at both mines was scheduled from June 28 to and including July 8. However, at Millstadt, certain repair work was in progress, and the opening date there was re-scheduled to July 15th. The mine did reopen on July 29th. O'Fallon was reopened on July 22nd.

While the mines were closed, Peabody withdrew from the Coal Producers Association of Illinois, and also gave notice to Progressive that it would terminate the con-

tract between them on September 30, 1957. On August 4, 1957, Dupee wrote Peabody protesting Peabody's contemplated termination of the agreement, and requested Peabody to meet with Progressive as the employees' bargaining representative to negotiate a new agreement. Peabody did not respond to this request to bargain. On September 30, 1957, Peabody terminated its contract with Progressive and ceased making payments to the Progressive Welfare and Retirement Fund. On October 1, 1957, Peabody recognized UMW, and applied the UMW contract at the Millstadt and O'Fallon mines.

The Board adopted substantially all of the trial examiner's conclusions and recommendations. The Board found Peabody violated Section 8 (a) (2) and (1) by assisting and supporting UMW, a) by furnishing UMW with lists of its employees at the two mines; b) by discriminatorily locking out employees at Millstadt from July 15 to July 20, 1957, and at the O'Fallon mine from July 9 to July 20, 1957, in order to encourage membership in UMW; c) during the periods of lockouts, threatening employees with continued lockout; d) by refusing to bargain with Progressive; e) by terminating the bargaining agreement with Progressive on September 30; f) by discontinuing payments to Progressive's Welfare and Retirement Fund on September 30; g) by entering into an exclusive bargaining contract with UMW at a time when that Union did not represent an un-coerced majority of employees; and h) by entering into a contract containing illegal closed shop provisions. The Board also found the conduct of Peabody violated Section 8 (a) (3) and (5) of the Act.

The Board found and determined UMW violated Section 8 (b) (1) (A) and (2) of the Act by demanding Peabody enter into a collective bargaining agreement with it; by its letter of July 1, 1957, addressed to each employee of the two mines; and by its newspaper ad addressed to mine employees stating UMW was requiring

Peabody to apply the provisions of the UMW contract at the two mines and by entering into contracts containing illegal Union-security provisions.

Peabody claims and offered testimony tending to prove that the reopening of the Millstadt mine was delayed for economic reasons, and the reopening of the O'Fallon mine was delayed for safety reasons, but the trier of the facts found otherwise. The examiner and the Board relied to a considerable extent upon statements made by vice president McCollum, general superintendent Hartman, and mine superintendent Schroeder, to the effect that the mines would not reopen and operate unless UMW was designated as bargaining representative by the employees.

True, these officers denied making many of the statements relied upon, but we cannot disturb credibility resolutions made by the Board. **NLRB v. Wagner Iron Works**, 7 Cir., 20 F. 2d 126, 142. The weight to be attached to and the credibility to be accorded testimony is a matter for the trier of the facts. **Sunshine Biscuits, Inc. v. NLRB**, 7 Cir., 274 F. 2d 738, 741.

The trial examiner found the furnishing of the mailing lists to UMW did not "constitute unlawful assistance to United and interference within the meaning of the Act. * * *" The Board disagreed. It did not say the furnishing of the lists was illegal *per se*, but that the furnishing of the lists in the context of other acts of assistance constituted illegal assistance, citing **Wagner Iron Works**, 104 N. L. R. B. 445, enforced, **NLRB v. Wagner Iron Works**, 7 Cir., 220 F. 2d 126.

We think the furnishing of the lists by itself would be no basis for the conclusion of the Board. Even considered with other acts of assistance, it is a slender reed on which the Board in part, rests its decision. Although of relatively small importance in this case, we are not disposed

to interfere with the Board's decision as to the effect of furnishing the lists.

The National Bituminous Coal Wage Agreement of 1950 contains the following provision: "It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, **to the extent and in the manner permitted by law**" (Emphasis supplied).

An integral part of the same printed document which contains the above quoted provision is: "Wage Agreement and Working Conditions between the Illinois Coal Operators Association and The International Union United Mine Workers of America and District No. 12, United Mine Workers of America." This agreement bears the effective date of April 1, 1941 and provides that it remains in full force and effect in its provisions * * * except where they have been amended, modified and or nullified by the National Bituminous Coal Wage Agreements incorporated in this book."

The trial examiner found the requirement of UMW membership contained in the 1941 district agreement was an integral part of the UMW's National Bituminous Coal Wage Agreement and concluded that it provided for an unlawful closed shop. The Board agreed, but went further and held the Union security clause in the 1950 agreement provides for an unlawful closed shop in spite of the provision "* * * to the extent and in the manner provided by law." Such a holding is contrary to our decision in **Lewis v. Quality Coal Corporation**, 270 F. 2d 140.

The Board seeks first to distinguish **Quality Coal** on the ground that that case involved private litigation. It then asks us to reconsider our decision in **Quality Coal**, and cites the same cases which this Court considered and rejected when it handed down the **Quality Coal** decision.

It is entirely immaterial that **Quality Coal** arose in the context of private litigation. The question that was fully litigated in that case was decided adversely to the present position of the Board.

We decline the cordial invitation of the Board to abandon our decision in **Lewis v. Quality Coal Corporation.** We adhere to that decision. For whatever significance it may have, it also is of interest to note that the United States Supreme Court denied certiorari in **Quality Coal**, 361 U. S. 929.

We are of the view and hold that the Board was in error in holding the 1941 agreement, which provided for a closed shop, was not amended or modified by the 1950 agreement. It seems clear that the contracting parties contemplated that changes might be necessary under the law, and evinced a desire to conform to such changes.

The intention of the parties is also shown by the manner in which employment practices were carried out at the two mines. No employee claims his rights under Section 7 were violated. Furthermore in the transition from Progressive to UMW, no employee at either mine lost his job. Membership in UMW was not a condition of employment. An employee did not need to belong to UMW to retain his employment.

Where two constructions of a written contract are possible, preference is given to that one which does not result in a violation of law. **Great Northern Railway Co. v. Delmar Co.**, 283 U. S. 686, 691.

The National Agreement by its own terms prevails over the District Agreement. The clear and unequivocal phrase in the National Agreement renders inoperative the union security provision of both agreements.

We hold the Board was in error in finding and concluding Peabody violated Section 8 (a) (1) and (3) of the

Act by entering into and maintaining a contract which contains closed shop provisions, and that UMW violated Section 8 (b) (1) (A) and (2) of the Act by demanding, entering into and maintaining a contract which contained closed shop provisions.

The Board's order requires that Peabody and UMW jointly and severally "reimburse all employees for moneys illegally exacted from them" and to "make whole" employees for any loss suffered by reason of the discriminatory discontinuation of the Progressive Fund payments." An issue which we must decide is whether such a remedy is appropriate under the facts of this case.

The Supreme Court discussed the power of the Board to order affirmative remedies in **Republic Steel Corporation v. NLRB**, 311 U. S. 7. The Court there stated, page 11: "* * * We do not think that Congress intended to vest in the Board a virtually unlimited discretion to devise punitive measures, and thus to prescribe penalties or fines which the Board may think would effectuate the policies of the Act. We have said that 'this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices even though the Board be of the opinion that the policies of the Act might be effectuated by such an order.' * * * (citing cases)."

In **Virginia Electric & Power Company v. NLRB**, 319 U. S. 533, the Supreme Court held that reimbursement of dues was an appropriate remedy to effectuate the purposes of the Act. However, the Court expressly limited the decision in that case to the particular facts before it, and refused to express an opinion on the merits of eleven cases in five different circuits which refused to enforce similar Board orders. It is of interest to note

that the **Virginia** case concerned a company-dominated union, and all the employees had to join the union and remain members thereof in order to retain their jobs.

In **Western Union Telegraph Company v. NLRB**, 2 Cir., 113 F. 2d 992, the Court refused to enforce a refund order similar to the one here under consideration. The Court said, page 997: "It by no means inexitably follows, because an employer has so conducted himself towards a union as to disqualify it from acting as collective bargaining agent for all his employees, that he has inflicted pecuniary damage upon each member of the union. * * * *"

In his concurring opinion in the **Virginia** case, supra, Justice Frankfurter pointed out the significant distinction between cases like **Western Union** and **Virginia**. He said, 319 U. S. at page 545: "But the vital difference between the **Western Union** and this case is that, in the former, 'there was no evidence that all those (employees) who asked to have their wages stopped, did so in any part because they were coerced.' * * * Here the employees had no such choice; they could avoid the check-off of union dues only by giving up their jobs."

In **Local 357, Teamsters Union v. NLRB**, D. C. Cir., 275 F. 2d 646, the Court refused to enforce a dues-reimbursement order except as to an individual who was actually discriminated against by the illegal hiring hall agreement. The Court said the order went too far in directing reimbursement to all casual employees.

It is the Board's view that the presumption of coercion is conclusive once the unfair labor practice is shown. However, in **NLRB v. United States Steel Corporation**, 3 Cir., 278 F. 2d 896, the Court refused to accept this argument and declined to enforce the order because there was no evidence that any employee was coerced. The Court was under the impression that this Court had de-

cided to the contrary in **NLRB v. Local 60, United Brotherhood of Carpenters**, 273 F. 2d 699, but stated, at page 90: "there is a growing body of authority, some of it very forcefully and clearly written, supporting our view."

In **NLRB v. Local 60, United Brotherhood of Carpenters**, this Court approved the Board's finding that the contract contained an unlawful closed shop clause. The Board ordered reimbursement and this Court said it was a proper remedy because the "record does support the Board's finding that such fees were coerced in that there was present an implicit threat of loss of job if those fees were not paid." (273 F. 2d, at 703). Significantly, the opinion went on to hold, "The burden rested on the respondents to show that even without the unlawful discrimination, the Company's employees would have maintained their membership in Local 60" (273 F. 2d; at 703). The Supreme Court has recognized the contrary holdings of our **Local 60** opinion and that of the District of Columbia Court of Appeals in the **Local 357** case, and has granted certiorari in both cases.

Of course, we shall follow the decision of this Court in the **Local 60** case if it is controlling under the facts of the instant case. For the reasons hereinafter stated, we hold that our decision in **Local 60** is not controlling in the case at bar.

In **Local 60**, not only was the hiring agreement found to be unlawful, but two employees were declined employment by reason thereof. This Court found reimbursement of dues proper "to restore employees to the position they would have enjoyed but for the illegal practices" (273 F. 2d, at 703).

By contrast, in the case at bar, there are no findings that dues were paid under coercion or under any threat or implied threat of loss of job. In the instant case, no

employee did lose his job in the change-over to UMW. No employee complained or testified that he was coerced into signing dues cards. There is clear evidence in the record that membership in UMW was not a condition of employment. Furthermore, at the time of the contract with Peabody, employees at both mines, by cards, and by election at O'Fallon, indicated their choice of UMW.

In the great majority of cases raising the issue of dues reimbursement, only one union was involved. In such cases, were it not for the unfair labor practices, it is quite possible the employees involved would not have paid any dues. Here the employees were all union men. True, they had been members of Progressive and not UMW, but during the period that UMW collected its dues, the employees received all of the rights and benefits of belonging to UMW. These employees would have paid union dues regardless of any unfair labor practices.

Inasmuch as there are no findings of actual coercion in the instant case nor any evidence which would have supported such findings, we hold that part of the order requiring reimbursement of dues paid, should not be enforced.

We next consider the requirement of the order that Peabody and UMW jointly and severally "make whole employees for any loss suffered by reason of the discriminatory discontinuation of the Progressive Fund payments." We note that payments were made by Peabody into that fund during the entire duration of the contract with Progressive. To say that at the time the old contract expired, a new contract would have been entered into with Progressive, would seem to be sheer speculation. The General Counsel asked the trial examiner to reinstate Progressive's contract but he refused to do so. The Board makes no mention of this part of the examiner's

intermediate report, so we assume the Board adopted the action of the trial examiner in that respect. Nevertheless, the Board's order, in effect, reinstates at least part of Progressive's contract.

Since October 1, 1957, Peabody has paid into UMW Welfare and Retirement Fund, royalty payments of 40 cents a ton for every ton which it has sold from the O'Fallon and Millstadt mines. If it had made payments into the Progressive Fund, the amount would have been 20 cents a ton. There should be no windfalll to employees which might enable them to draw from both funds for the period when they would be entitled to receive payments from one or the other. Such part of the Board's order is penal in effect and should not be enforced.

UMW claims the order is too broad. It specifies three objections: 1) Paragraph 2 (a) (3) of the order is merely a command to broadly obey the statute; 2) the order and notice should be limited to the employees of the two mines involved; and 3) the inclusion of "any other employer" is invalid in paragraph 2 (b) (3) of the order.

The Board has the power to make an order like paragraph 2 (a) (3), **NLRB v. Cheney California Lumber Co.**, 327 U. S. 385. Whether it is justified depends on the circumstances of each case. **NLRB v. Express Publishing Co.**, 312 U. S. 426. The Board argues the reason for the paragraph was that the illegal contract covered all Peabody employees. But, since we hold the contract is valid, the order should be limited to UMW's and Peabody's actual unfair labor practices in this case.

Under the authority of **NLRB v. United Brotherhood of Carpenters**, 7 Cir., 276 F. 2d 694, the order should be limited to the employees of the two mines involved.

The words "or any other employer" in paragraph 2 (b) (3) of the order should not be enforced. **Communica-**

tions Workers v. NLRB, 362 U. S. 479. UMW was not found to have engaged in violations against the employees of any employer other than Peabody. In any event, the whole clause should be stricken since the contract did not violate the Act.

The Order of the Board, modified as indicated in this opinion, will be enforced.

No. 12889

Schnackenberg, Circuit Judge. For the reasons set forth in my opinion in **Lewis v. Quality Coal Corporation**, 270 F. 2d 140, 144, I dissent from those parts of Judge Duffy's opinion which are inconsistent with my said views.

In all other respects I concur with his opinion.

APPENDIX B.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois
Friday, December 2, 1960.

Before
Hon. F. Ryan Duffy, Circuit Judge
Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Frederick O. Mercer, District Judge

Perry Coal Company and Peabody Coal Company, et al., Petitioners, vs. National Labor Relations Board, Respondent:	On Petitions to Review and set Aside an order of the National Labor Relations Board.
No. 12889	
United Mine Workers of America, et al., Petitioners, vs. National Labor Relations Board, Respondent.	
No. 12915	

This cause came on to be heard on the petitions to review and set aside an order of the National Labor Relations Board, the answer and request for enforcement of said order, the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the order entered in this cause by the National Labor Relations Board on December 30, 1959, be modified as indicated in the opinion of this Court filed this day, and as so modified the said order will be enforced.

APPENDIX C.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois
Tuesday, January 17, 1961.

Before
Hon. F. Ryan Duffy, Circuit Judge
Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. Frederick O. Mercer, District Judge

Perry Coal Company, et al., United Mine Workers of America, et al., Petitioners, vs. National Labor Relations Board, Respondent.	Petitions for Review of an order of the National Labor Relations Board.

No. 12889-12915

It Is Ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

APPENDIX D.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

Perry Coal Company, Midwest-Radiant Corporation and Peabody Coal Company, Petitioners, v. National Labor Relations Board, Respondent.	No. 12889.
United Mine Workers of America; District 12, United Mine Workers of America; Local Union 1227, United Mine Workers of America; and Local Union 1229, United Mine Workers of America, Petitioners, v. National Labor Relations Board, Respondent.	No. 12915.

Decree.

Before: Duffy and Schnackenberg, Circuit Judges, and Mercer, District Judge.

This cause came on to be heard upon petition of Peabody Coal Company to review and set aside an order of the National Labor Relations Board, dated December 30, 1959, issued against Peabody and against the United Mine

Workers of America et al.; and also upon petition of the United Mine Workers of America et al. to review and set aside the same order of the Board. In its answers and cross-petitions the Board requested enforcement of its order. The Court heard argument of respective counsel on September 27, 1960, and has considered the briefs and transcript of record filed in this cause. On December 2, 1960, the Court being fully advised in the premises handed down its decision enforcing, as modified, said order of the Board. In conformity therewith it is hereby

Ordered, Adjudged and Decreed by the United States Court of Appeals for the Seventh Circuit that the Petitioner, Peabody Coal Company, its officers, agents, successors and assigns shall

a. Cease and desist from

(1) Giving effect to the collective bargaining agreement entered into on or about October 1, 1957, with United Mine Workers of America, its District 12, and its Locals 1227 and 1229, or to any extension, renewal or modification thereof.

(2) Recognizing United Mine Workers of America, its District 12, and its Locals 1227 and 1229, as the representative of any of its employees at the O'Fallon and Millstadt mines for the purposes of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment; unless and until said labor organizations shall have demonstrated their exclusive majority representative status pursuant to a Board conducted election among the Company's employees; said election to be conducted as early as possible under applicable rules, regulations and practices; it being understood that Peabody need not bargain with any union claiming to represent the employees at

the O'Fallon and Millstadt mines until the Board has certified the results of the election so held.

(3) Assisting and contributing support to United Mine Workers of America, its District 12, and its Locals 1227 and 1229, or to any other labor organization.

(4) Encouraging membership in the above named labor organizations, or in any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any term or condition of employment, except to the extent permitted by the proviso to Section 8 (a) (3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

(5) In any other manner interfering with, restraining or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Progressive Mine Workers of America, District 1, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a) (3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

b. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(1) Withdraw and withhold all recognition from United Mine Workers of America, its District 12, and its Locals 1227 and 1229, as the representative of any of its employees at the Millstadt and O'Fallon mines for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until the said labor

organizations shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the said employees;

(2) Make whole all employees at its O'Fallon and Millstadt mines for any loss of earnings they may have suffered by reason of the discriminatory lockout, as found herein;

(3) Preserve and, upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all records necessary for the determination of the amount of back pay due under this Decree.

(4) Post at its Millstadt and O'Fallon mines copies of the notice attached hereto and marked "Appendix A". Copies of said notice to be furnished by the Regional Director for the Fourteenth Region shall, after being duly signed by Peabody's authorized representative, be posted immediately upon receipt thereof, in conspicuous places, including all places where notice to employees is customarily posted, and maintained for a period of sixty (60) consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(5) Post at the same places and under the same conditions as set forth in (4) above, and as soon as they are forwarded by the aforesaid Regional Director, copies of the Unions' notice herein, marked "Appendix B";

(6) File with the said Regional Director within ten (10) days from the date of this Decree a report setting forth in detail the steps which it has taken to comply with this Decree.

The United Mine Workers of America, its District 12, and its Locals 1227 and 1229; their officers, representatives, agents, successors and assigns, shall:

a. Cease and desist from :

(1) Giving effect to the agreement of on or about October 1, 1957 with Peabody Coal Company, or to any extension, renewal, modification, supplement, or other contract with said employer, unless and until said labor organizations shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the employees of Peabody Coal Company, at its O'Fallon and Millstadt mines;

(2) Restraining or coercing the employees of Peabody Coal Company, at its O'Fallon and Millstadt mines in the right to select or not to select the United Mine Workers, its District 12 and its Locals 1227 and 1229 as their bargaining representative and to join or not to join said labor organizations, except to the extent that such right may be affected by an agreement executed as authorized by the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

b. Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(1) Post at the business offices of District 12 and Locals 1227 and 1229, copies of the notice attached hereto and marked "Appendix B". Copies of said notice, to be furnished by the aforesaid Regional Director, shall, after being duly signed by an official representative, be posted immediately upon receipt thereof and be maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(2) Mail to the said Regional Director signed copies of the notice attached hereto and marked "Appendix B"

for posting at the Company's Millstadt and O'Fallon mines;

(3) Notify the said Regional Director, in writing, within ten (10) days from the date of this Decree what steps the Unions have taken to comply with the Decree.

s/ F. Ryan Duffy,
Judge, United States Court of Appeals for the Seventh Circuit.

s/ Elmer J. Schnackenberg,
Judge, United States Court of Appeals for the Seventh Circuit.

s/ Frederick O. Mercer,
Judge, United States District Court, Southern District of Illinois, sitting by designation on Court of Appeals for the Seventh Circuit.

[APPENDIX A.]

Notice to All Employees of Our O'Fallon and Millstadt Mines.

Pursuant To

A Decree of the United States Court of Appeals for the Seventh Circuit enforcing an Order, as modified, of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not encourage membership in United Mine Workers of America, its District 12, and its Locals 1227 and 1229, or in any other labor organization, of our employees, by discriminating in regard to hire, tenure, or any term or condition of employment, except to the extent authorized by Section 8 (a) (3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

We Will Not give effect to any and all agreements and contracts, supplements thereto or modifications thereof, or any superseding contract with the above-mentioned labor organizations with respect to the employees at the O'Fallon and Millstadt mines.

We Will Not contribute support to the above-named labor organizations.

We Will withdraw and withhold recognition from the above-named labor organizations, or any successor thereto, with respect to the employees at the O'Fallon and Millstadt mines, unless and until they shall have demonstrated exclusive majority representative status pursuant to a Board-conducted election among our employees at the said mines.

The bargaining units are:

(1) All employees at the O'Fallon mine covered by the 1952 contract between Progressive and the Coal Producers' Association of Illinois, and

(2) All employees at the Millstadt mine covered by the same contract, excluding such categories of employees as required by law.

We Will Not give effect to any checkoff cards, heretofore executed by our employees, authorizing deductions from their wages for remittance to United Mine Workers of America, its District 12, and its Locals 1227 and 1229.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their statutory rights.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that this right may be affected

by agreements in conformity with Section 8 (a) (3) of the National Labor Relations Act, as amended by the Labor Management Reporting and Disclosure Act of 1959.

Peabody Coal Company,
(Employer)

By .....
(Representative) (Title)

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[APPENDIX E.]

Notice to All Members of United Mine Workers of America, Its District 12, and Its Locals 1227 and 1229, and to All Employees of Peabody Coal Company at Its Millstadt and O'Fallon Mines.

Pursuant To

A Decree of the United States Court of Appeals for the Seventh Circuit enforcing an Order, as modified, of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby give notice that:

We Will Not give effect to our agreements of, on or about October 1, 1957, or to any other contract with Peabody Coal Company covering employees at the above-named two mines, unless and until we shall have demonstrated our majority representative status pursuant to a Board-conducted election among employees at the aforesaid mines.

We Will Not restrain or coerce the employees of the said employer in their right to select or not to select the United Mine Workers, its District 12, and its Locals

1227 and 1229 as their bargaining representative, and to join or not to join said labor organizations except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, executed in conformity with Section 8 (a) (3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

United Mine Workers of America,
(Labor Organization)

By .....
(Representative) (Title)

Dated .....

District 12, United Mine Workers of America,

By .....
(Representative) (Title)

Dated .....

Local 1227, United Mine Workers of America,
(Labor Organization)

By .....
(Representative) (Title)

Dated .....

Local 1229, United Mine Workers of America,
(Labor Organization)

By .....
(Representative) (Title)

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX E.

Text of Pertinent Provisions of Labor Management Relations Act of 1947, 61 Stat. 136, as Amended.

Section 7 (29 U. S. C. A. 157)

Section 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

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Section 8 (29 U. S. C. A. 158).

Section 8. (a) It shall be an unfair labor practice for an employer

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: **Provided,** that subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to

encourage or discourage membership in any labor organization: **Provided**, that nothing in this Act, or any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: **Provided further**, that no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

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(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

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Section 10 (29 U. S. C. A. 160).

Section 10.

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(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: **Provided,** that where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: **And provided further** that in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of

any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part the order of the Board. No objection that has been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by

substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

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